THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.25565 of 2006

Date:23 .08.2007

Between:

Sree Rama Apartment Flat Owners Association.

....Petitioner

And

Sree Rama Apartments Welfare Association and another.

....Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.25565 of 2006

ORDER:

The petitioner herein, an association registered under the Andhra Pradesh (Telangana Area) Pubic Societies Registration Act, 1350 Fasli (for short 'the 1350-F Act'), assails the order, dated 18.09.2006, passed by the Court of II Additional District Judge, Ranga Reddy District in I.A.No.870 of 2006 in O.P.No.917 of 2002.

The facts, that led to the filing of the writ petition, are as under:

A multi-storied residential complex, by name Sri Rama Apartments, was constructed in the premises bearing No.3-14-20 of Ramanthapur Village, Ranga Reddy District. While some of the owners of the flats formed the petitioner-association, the others organized themselves into the first respondent-association. Both the associations were registered under the 1350-F Act.

The first respondent-association filed O.P.No.917 of 2002 in the Court of II Additional District Judge, Ranga Reddy District, under Section 23 of the 1350-F Act, for a declaration that the formation of the petitioner-association i s *null* and *void* and untenable. The relief of perpetual injunction, restraining the petitioner-association from interfering with the administration of the first respondent-association, was also sought. Some members of the petitioner-association were impleaded as respondents 1 to 4 in that O.P. A direction was also sought against them to pay the service charges, including arrears.

The petitioner-association filed I.A.No.870 of 2006 under Order VII Rule 11 C.P.C. in that O.P., with a prayer to frame a preliminary issue, as to the very maintainability of the O.P. It is pleaded that the 1350-F Act has since been repealed and the O.P. filed under that Act was not

maintainable. It was also urged that the nature of reliefs claimed in the O.P. cannot be granted, under that enactment. The first respondent resisted the I.A. Through its order, dated 18.09.2006, the trial Court took the view that the O.P. filed under Section 23 of the 1350-F Act deserves to be treated as the one either under Section 11 of the 1350-F Act or under Section 23 of the Andhra Pradesh Societies Registration, 2001 (for short 'the 2001 Act'). As regards the maintainability of the O.P. on merits, the trial Court held that the matter needs to be considered at the hearing of the O.P.

The petitioner-association contends that even assuming that the O.P. is filed under Section 23 of the 2001 Act, the relief claimed therein cannot be granted, since it is outside the scope of that provision.

On behalf of the first respondent-association, a detailed counter affidavit is filed, almost repeating its stand taken before the trial Court, opposing the I.A.

Sri Srinivasa Rao, the learned counsel for the petitioner submits that the scope of Section 23 of the 2001 Act or Section 11 of the 1350-F Act is very limited and it is the disputes, among the members of the society, that can be resolved thereunder. He contends that the relief of

declaration in respect of a different organization cannot be claimed, much less granted under that provision.

Sri D.V.Sitaram Murthy, the learned counsel for the respondents, on the other hand, submits that though an inadvertent mistake had crept in, in referring to the provision, under which the O.P. is filed, it ultimately emerges that the O.P. is maintainable under Section 23 of the 2001 Act. He further submits that the relief claimed in the O.P. is comprehensive in nature and it is only after the trial, that the Court can consider as to the nature of relief that can be granted to the parties.

The first respondent filed the O.P. under Section 23 of the 1350-F Act. Under that enactment, the relevant provision for filing an O.P. is Section 11. The 1350-F Act was replaced by the 2001 Act. The corresponding provision to Section 11 of the old Act is Section 23 in the new Act. Though the Number of the Section was correctly referred to, the name of the enactment was wrongly mentioned, obviously on account of inadvertence. The trial Court took the view that the mistake is not material or serious, warranting dismissal of the O.P., on that ground. This Court does not see any basis to differ with the said observation.

In addition to complaining about the inaccuracy of the provision cited in the O.P., the petitioner had raised serious objection as to the maintainability of the O.P., having regard to the relief claimed in it. Therefore, it becomes necessary to refer to the relevant provision as well as the nature of relief claimed in the O.P. Section 23 of the 2001 Act reads as under:

> 23. **Dispute regarding management**:- In the event of any dispute arising among the Committee or the members of the society, in respect of any matter relating to the affairs of the society, any member of the society may proceed with the dispute under the provisions of the Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996) or may file an application in the District Court concerned and the said Court shall after necessary inquiry pass such order as it may deem fit.

On a plain reading of the same, it becomes evident that the subject matter of a petition or an application, that is filed under this provision, can be a dispute among the committee or the members of the society and such dispute, in turn, must be in respect of the matter relating to the affairs of the society. Being an exception to the other general remedies provided for under law, strict compliance is to be ensured, whenever an application is

filed under this provision. The reliefs claimed by the first respondent in the O.P. read as under:

> a) to declare that the formation an association under the name and style of SRAFOA, of Respondent No.5 by Respondent No.1 to 4 is null and void and untenable;
>
> b) to grant injunction restraining Respondent No.5 Association and its office-bearers from interfering with the administration and maintenance of "Sree Ram Apartments Welfare Association" by petitioners Association;
>
> c) to direct Respondents 1 to 4 to pay the maintenance and other service charges including arrears to petitioner's association regularly;

Three categories of reliefs viz., declaration, injunction and direction are prayed for. Section 23 of the 2001 Act, as such, does not limit or restrict the nature of relief, that can be granted in an O.P. filed thereunder. However, it is very clear, in its purport, that the adjudication can be made only to the disputes between or among the members of the society and in relation to the management of the society. Had the O.P. been filed by the members of the first respondent-society, against any members of that society, no difficulty, as such, would have arisen. The principal relief claimed in the O.P. is to declare the very formation of the petitioner-society as *null*

and *void*. None of the respondents in the O.P. are the members of the first respondent-society. Under these circumstances, it becomes untenable for the first respondent-society to file the O.P. under Section 23 of the 2001 Act against the petitioner-society and its members.

It is not as if the first respondent does not have any remedy. The reliefs claimed by it in the O.P. can be prayed for in a suit filed under the relevant provisions of the Specific Relief Act. When the recourse is to a special remedy, under a special enactment, strict compliance must be ensured and a relief, which is not provided for under it, cannot be claimed.

Had it been a mixed question of fact and law, the course suggested by the trial Court would have become tenable. Such questions have to be dealt with only in the trial. When a mere perusal of the relief demonstrates that it cannot be claimed under the provision cited in the O.P., the parties cannot be required to undergo the ordeal of trial. Such a superfluous exercise would have its own affect upon the precious time of the Court as well as the expenses to be incurred by the parties.

For the foregoing reasons, the writ petition is allowed and the impugned order is set aside.

Consequently, I.A.No.870 of 2006 is allowed and it is held that O.P.No.917 of 2002 on the file of the learned II Additional District Judge, Ranga Reddy District, is not maintainable in law. It shall, however, be open to the first respondent-society to pursue its remedies, in accordance with law. There shall be no order as to costs.

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L.NARASIMHA REDDY, J.

Date: 23.08.2007
JSU